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No. 85-876

In The
Supreme Court of the United States
October Term, 1985

JON A. VICARS,
Petitioner,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA,
Respondent.

BRIEF AMICUS CURIAE OF THE CITY OF BERKELEY RENT STABILIZATION BOARD

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THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ALAMEDA,
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BRIEF AMICUS CURIAE OF THE CITY OF BERKELEY RENT STABILIZATION BOARD

INTEREST OF AMICUS CURIAE

The City of Berkeley Rent Stabilization Board (hereinafter referred to as "the Board") is the administrative agency charged with implementation and enforcement of residential rent controls pursuant to Berkeley City Charter, Article XVII, Section 123. As such, it is interested in all judicial interpretations of the Rent Stabilization and Eviction for Good Cause Ordinance, Berkeley Municipal Code Chapter 13.76.

The Board, along with other defendants including the City of Berkeley, is a named defendant in an action now pending in Superior Court of the State of California in and for the County of Alameda which also arises out of the facts of this case. In this related matter, Vicars seeks damages for alleged violation of civil rights pursuant to 42 U.S.C. § 1983, inverse condemnation, injunctive and declaratory relief on the grounds that he has a constitutional right to evict his tenants and to go out of business. Vicars alleges that the Board, and others, are preventing him from exercising this right. (This action is entitled *Vicars v. City of Berkeley, et. al,* Alameda Superior Court No. 582948-6. A copy of the Complaint filed in that action is included as Appendix "A" to this brief.)[1]

Any ruling by this Court on the issues raised by Vicars will substantially impact the result in the pending trial court matter. Therefore, the Board has an interest in insuring that its position is presented to this Court at the earliest possible moment. The Board has appeared as amicus curiae in the courts below in the instant matter.

Counsel for petitioner and counsel for the real parties in interest (the tenants) have consented to the filing of this amicus brief. The letters of consent have been filed with the Court concurrently with the filing of this brief.

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1. Although demurrers by the tenant defendants have been sustained without leave to amend, the City and the Board answered the complaint and the action is still pending as to the municipal defendants.

REASONS FOR DENIAL OF CERTIORARI

By his petition, Vicars seeks review of California decisions upholding provisions of the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance which limit the grounds upon which tenants may be evicted. Vicars brought his rental property in 1982, some two years after the Ordinance was adopted by the voters and some four years after Berkeley rent controls were instituted in 1978. He soon became displeased with operating in a regulated environment and, by the end of 1983, decided to evict his tenants and go out of business. (Petition, p. 7)

This case presents no substantial federal question and the petition for writ of certiorari should be denied for two simple reasons. First, a recently enacted California statute accords petitioner the right to evict his tenants for the purpose of going out of business. Although this legislation was signed into law by the Governor of California on October 2, 1985, prior to the filing of the instant Petition, Vicars has failed to so advise the Court. The new statute moots the issues raised in the Petition. (A copy of the legislation is included as Appendix "B" to this brief.)

Moreover, petitioner's claims that his property rights have been taken without just compensation are not ripe under this Court's recent decision in *Williamson County Regional Planning Commission v. Hamilton Bank*, — U.S. —, 105 S.Ct. 3108 (1985). Specifically, Vicars has failed to establish that he has sought a rent increase from the Berkeley Rent Stabilization Board to compensate for any allegedly impermissible taking which may result from the rents he is presently permitted to charge under rent control. He has also failed to demonstrate that the

state remedy provided by the newly enacted legislation which permits him to go out of business does not prevent or obviate any alleged taking which might be otherwise claimed. This further establishes that his claims are not yet ripe for review. Finally, his claim for damages for alleged inverse condemnation under the Civil Rights Act (42 U.S.C. § 1983) is currently pending against amicus, and others, in the California Superior Court, County of Alameda. Until this litigation is concluded, Vicars' attempt to obtain review of these claims by this Court is premature.

I

THE PETITION IS MOOT IN THAT CALIFORNIA LAW PERMITS PETITIONER TO EVICT HIS TENANTS FOR THE PURPOSE OF GOING OUT OF BUSINESS.

In its most recent session, the Legislature of the State of California enacted Senate Bill No. 505 which added Chapter 12.75 (Commencing with Section 7060) to Division 7 of Title 1 of the Government Code to accord residential landlords the right to evict their tenants for the purpose of withdrawing their property from the rental housing market. In *Nash v. City of Santa Monica,* 37 Cal. 3d 97 (1984), the California Supreme Court concluded that requiring a landlord to continue to rent to existing residential tenants as part of a rent control scheme violated no state or federal constitutional rights of the landlord. This Court denied review for want of a substantial federal question. *Nash, supra,* appeal dis. — U.S. — (March 18, 1985). Although amicus believes that the result in this case is controlled by *Nash,* the instant matter can be re-

solved without deciding the constitutional issues raised by petitioner.

In enacting the new statute, the California Legislature took pains to explain the reasons for its actions. California Government Code § 7060.7, in pertinent part, states:

> It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in Nash v. City of Santa Monica, 37 Cal. 3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business.

California Government Code § 7060(a) now provides:

> No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential rental real property to offer, or continue to offer, accommodations in the property for rent or lease.

Thus, notwithstanding *Nash, supra,* California law now permits eviction of tenants for the purpose of going out of business. Government Code Section 7060.2 through 7060.6 permit local entities to adopt certain regulatory measures to insure that the process is not abused and to provide that if the property is restored to the residential rental market, displaced tenants have the right of first refusal for a certain period of time.

The new statute would seem tailored to the needs and desires of landlords like Vicars who do not wish to participate in the regulated housing industry but who do not seek to otherwise change the use of their property. (Petition, p. 9). He will now be able to empty the entire build-

ing by eviction and, so long as he does not decide to re-enter the regulated market, be relieved of the duties of a landlord.

The relevant provisions of the statute become effective on July 1, 1986. (SB 505, Section 2). Amicus respectfully submits that by the time this case would be decided if this Court grants the petition, Vicars will be able to go out of business and carry out the evictions he desires. This not only moots the underlying issue of his right to go out of business, but also disposes of the question of how long he will be "forced" to remain a landlord. (See Petition, p. 7). Therefore, petitioner's claim of permanent physical invasion of his property—in violation of the rule announced in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)—is without merit and the Court need not reach the issue of whether or not eviction protections impermissibly infringe upon property rights. Amicus submits, however, that under *Nash, supra* and under *Fresh Pond Shopping Center v. Callahan*, — U.S. —, 104 S. Ct. 218 (1983) eviction controls, such as those contained in the Berkeley Rent Stabilization and Eviction for Good Cause Ordinance, would be fully sustainable even if SB 505 had not been enacted.

In light of the new statute, amicus submits that there is no substantial federal question and that certiorari should be denied because the issue is moot.

II

PETITIONER'S CLAIMS THAT HIS PROPERTY HAS BEEN TAKEN WITHOUT JUST COMPENSATION ARE NOT PROPERLY BEFORE THE COURT.

In addition to claiming a constitutional right to go out of business, Vicars, in effect, asserts that his rents are excessively low as a result of regulation, that he cannot profitably afford to hire a manager and that the value of his property has been reduced. (Petition, p. 6, 12). He urges that he was unable to present these arguments in the unlawful detainer proceeding wherein he sought to evict the tenants. However, the limited scope of the issues considered in unlawful detainer is intrinsic to the summary nature of the proceeding in California. *Knowles v. Robinson*, 60 Cal.2d 620, 625 (1963). This Court has specifically affirmed that summary procedures, affording only limited rights to the litigants, are constitutionally sufficient in eviction matters. *Lindsey v. Normet*, 405 U.S. 56, 66-73 (1972).

Thus, after selecting the unlawful detainer forum to raise the question of his constitutional right to go out of business, Vicars cannot object that it does not furnish all of the relief he desires. Significantly, Vicars has failed to advise this Court that he is already pursuing the California Superior Court matter, *Vicars v. City of Berkeley, supra*, which raises the very causes of action which he claims were not considered in the eviction case below. As previously noted, the other lawsuit alleges that Vicars has suffered inverse condemnation in violation of 42 U.S.C. § 1983 as a result of the fact that the Rent Stabilization and

Eviction for Good Cause Ordinance does not permit eviction for the purpose of going out of business. *See* Appendix A. The Superior Court action is the proper forum for resolution of these claims.

More significantly, however, it is clear that Vicar's taking claims are not ripe for review under this Court's recent decision in *Williamson County Regional Planning Commission v. Hamilton Bank, supra.* That case requires that where a property owner claims to have suffered inverse condemnation, he or she must first utilize all agency procedures which might enable the agency to avoid or mitigate any alleged confiscation. *Id.* 105 S.Ct. at 1320-21.

Thus, just as the property owner in *Hamilton Bank, supra,* was required to seek available variances before it could claim that its property had been taken, Vicars must seek a rent increase from the Board (if he claims that his regulated rents are confiscatory) before he may pursue a federal taking claim. The record does not establish that he has done so. In fact, "[h]e simply decided for reasons both financial and personal to stop participating in the politically controlled housing market of the City of Berkeley and to withdraw his activities from the jurisdiction of a group of public officials whom he believed were abusing him." (Petition p. 7). Thus, he has failed to satisfy the *Hamilton Bank* requirements for raising a claim of taking.

Similarly, Vicars' taking claim is not ripe for review until he attempts to exercise the rights provided by SB 505 since this can obviate any alleged harm resulting from remaining in the rental housing business in a regulated environment. State action is not completed until all available state relief has been exhausted. Although petitioner

correctly points out that under *Agins v. City of Tiburon*, 24 Cal.3d 266 (1979) aff'd. on other grounds 447 U.S. 255 (1980), the remedy for inverse condemnation under California law is invalidation of the action in question, not damages, the recently enacted statute concerning eviction for the purpose of going out of business provides Vicars with an additional remedy which he must pursue before raising a taking claim in this Court.

Thus, Vicars must first seek a rent increase from the Berkeley authorities before he can claim that his property is being taken as a result of rents which are alleged to be too low. He must also exercise the right created by the new statute to go out of business before he can claim that the eviction controls associated with rent stabilization impermissibly infringe on his property rights. Until he has done both of these his claims are not properly before this Court under the rule set forth in *Hamilton Bank, supra.*

CONCLUSION

This case presents no significant constitutional issues. California law already accords petitioner the specific right to go out of business by evicting his tenants, thus mooting the petition. Petitioner's claims of taking without just compensation are not yet ripe for review. No purpose would be served by granting certiorari in the instant case.

For each of the foregoing reasons, the petition for writ of certiorari should be denied.

Dated: January 17, 1986

Respectfully submitted,

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APPENDIX A

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SUPERIOR COURT OF CALIFORNIA,
IN AND FOR THE COUNTY OF ALAMEDA

No. 582948-6

JON A. VICARS,

Plaintiff,

vs.

CITY OF BERKELEY, CITY OF BERKELEY RENT STABILIZATION BOARD, JACQUELINE FOSTER, ROSS EPPLER, SUE BLAKE, PETER BENSON, HILARY J. JOHNSON, JULIA ANN CATO, SUSAN STONE, WENDY MORRIS, FRANCESCA SUZIO, MARY ANN BRIDGET LAWLEY, BRIAN D. AKERS, and DOES 1 through 50, inclusive,

Defendants.

COMPLAINT FOR DAMAGES FOR VIOLATION OF CIVIL RIGHTS, INJUNCTIVE RELIEF, INVERSE CONDEMNATION, DECLARATORY RELIEF

(Filed March 4, 1984)

FIRST CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR VIOLATION OF CIVIL RIGHTS, 42 U.S.C. 1983)

1. At all times herein mentioned, plaintiff, JON A. VICARS, was, and now is, a citizen of the United States and a resident of Alameda County, State of California.

2. Plaintiff is the owner of real property commonly known as 2431-2435 Jefferson Street in the City of Berkeley, County of Alameda, and has been the owner of said property since July 15, 1982.

3. Said real property consists of a total of ten (10) residential rental units. Plaintiff is in the business of providing residential rental housing at 2431-2435 Jefferson Street, in the City of Berkeley by renting said units to defendant tenants as hereinafter identified.

4. Defendant City of Berkeley, "City" at all times mentioned herein, has been and is now a municipal corporation in the County of Alameda, organized and existing under and by virtue of the laws of the State of California.

5. Defendant City of Berkeley Rent Stabilization Board, "Rent Board" at all times mentioned herein, has been and is now a local governmental agency organized and existing under the charter and ordinances of the City of Berkeley, most particularly ordinance No. 5467 N.S.

6. Defendant, JACQUELINE FOSTER, at all times mentioned herein, has been the "Program Chief" of the City of Berkeley Rent Stabilization Board.

7. Defendants, ROSS EPPLER, SUE BLAKE, PETER BENSON, HILARY J. JOHNSON, JULIA ANNE CATO, SUSAN STONE, WENDY MORRIS, FRANCESCA SUZIO, MARY ANN BRIDGET LAWLEY, BRIAN D. AKERS, ("Defendant tenants") at all times mentioned herein, rented from plaintiff the following units located at 2431-2435 Jefferson Street, in the City of Berkeley:

Apartment "A" ROSS EPPLER

Apartment "B" SUE BLAKE

Apartment "C" PETER BENSON

Apartment "D" HILARY J. JOHNSON

Apartment "E" JULIA ANN CATO

Apartment "F" SUSAN STONE

Apartment "G" WENDY MORRIS

Apartment "H" FRANCESCO SUZIO

Apartment "J" MARY ANN BRIDGET LAWLEY

Apartment "K" BRIAN D. AKERS

8. The true names and capacities of defendants DOES 1 through 50 are unknown to plaintiff at this time, and, therefore they are sued by such fictitious names. When their identities have been ascertained, plaintiff will seek leave to amend this complaint to insert their true names and capacities. Each of the fictitiously named defendants, 1 through 50, was, at all times mentioned herein, acting in co-operation with and as agent for the previously named defendants.

9. At all times hereinafter mentioned, defendant City, defendant Rent Board, Defendant Jacqueline Foster, and defendants ficticiously named, and each of them, in doing all of the things hereinafter alleged, acted under color of their authority as such, and under color of the statutes, regulations, customs and usages of the State of California, the City of Berkeley and the Rent Stabilization Board.

10. On or about October 15, 1983 plaintiff decided that he no longer wanted to engage in the business of providing residential housing in the City of Berkeley. Ac-

cordingly in November of 1983 he notified defendant tenants that their tenancies were terminated thirty days after service of said notice. At the end of the thirty day period defendant tenants did not surrender possession of the residential units to the plaintiff and continued to remain in possession of said units, thereby forcing plaintiff to remain in the business of providing residential housing.

11. On or about November 23, 1983 defendant Rent Board met with various defendant tenants offering them advice and assistance in preventing plaintiff from going out of business. Said Rent Board caused to be sent to plaintiff and defendant tenants a letter dated November 23, 1983 that states in part:

> "Dear Mr. Vicars:
>
> It has come to my attention that you seek to regain possession of rental units you own at the above address on the purported basis of exercising an alleged constitutional right to go out of the rental business. You should be aware that the good causes for eviction are specifically set forth in Berkeley Municipal Code Section 13.76.130. There is no provision to evict tenants because you wish to cease renting the units. You could, of course, cease to be a landlord by selling your property to another person . . . "

Photocopy of said letter is attached hereto as Exhibit "A".

12. Plaintiff was compelled on December 14, 1983 to to file action no. 52930 in the Berkeley-Albany Municipal Court for unlawful detainer. Defendant tenants demurred to said complaint in that good cause for eviction under defendant City of Berkeley ordinance No. 5467 N.S. did not exist. Defendant Rent Board through counsel from the City Attorney's Office, presented argument to the court

at the hearing on the demurrer. On January 17, 1984 the Municipal Court sustained the demurrer with prejudice in that plaintiff failed to allege good cause for eviction pursuant to the requirements of the Berkeley ordinance. That ruling is being appealed by the plaintiff.

13. Defendant City has demanded from plaintiff payment of monies to maintain a business license despite plaintiff notifying defendant City that he is no longer in the business of providing residential rental housing. Defendant City continues to make such demands of plaintiff.

14. Plaintiff is forced, and since October 15, 1983, has been forced against his will, to provide for and maintain residential tenants under color of law. Plaintiff has not consented to any of defendants' actions and has attempted to prevent such action by lawful means.

15. Defendant Rent Board, defendant tenants, and ficticiously named defendants have, through their actions, forced plaintiff into involuntary servitude thereby depriving him of rights guaranteed by the United States and California Constitutions, including equal protection and due process.

16. As a proximate result of defendants' actions, and each of them, plaintiff has been deprived of his liberty to exercise his constitutional right to go out of business and has been deprived of his property in an amount according to proof, but in excess of $15,000.00 in violation of the Civil Rights Act, 42 U.S.C. sec. 1983.

17. As a further proximate result of defendants' actions, and each of them, plaintiff has been subject to humiliation and indignity, preventing him from engaging in ac-

tivities and business of his choice and causing him to suffer great mental pain and suffering, all to his damage in the sum of three hundred thousand dollars ($300,000.00).

18. Defendants, and each of them, did the things herein alleged maliciously and oppressively. Plaintiff is therefore entitled to exemplary and punitive damages in the sum of three hundred thousand dollars ($300,000.00).

WHEREFORE, plaintiff prays relief as hereinafter set forth.

SECOND CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR INJUNCTIVE RELIEF)

19. Plaintiff re-alleges and incorporates paragraphs 1 through 15 of the First Cause of Action herein, as though fully set forth.

20. Unless defendants are enjoined and restrained by this court, plaintiff will suffer irreparable injury.

21. Plaintiff is also informed and believes, and thereon alleges, that unless restrained and enjoined, defendants, and each of them, will continue to prevent plaintiff from going out of business and occupying his property, thereby preventing plaintiff from exercising his constitutional rights.

WHEREFORE, plaintiff prays relief as hereinafter set forth.

THIRD CAUSE OF ACTION
AGAINST CITY OF BERKELEY AND CITY
OF BERKELEY RENT STABILIZATION BOARD
(FOR INVERSE CONDEMNATION)

22. Plaintiff re-alleges and incorporates paragraphs 1 through 14 of the First Cause of Action herein as though fully set forth.

23. On or about November 23, 1983 defendant City and Rent Board by their actions in forcing plaintiff to remain in business of providing residential rental housing against his will and by allowing defendant tenants to remain in possession of the real property known as 2431-2435 Jefferson Street, as previously set forth, has caused a taking and damaging of the real property for which defendants City and Rent Board have not compensated plaintiff.

24. As a result of the above described taking and damaging of plaintiff's property, plaintiff has been damaged in the amount of three hundred thousand dollars ($300,000.00).

WHEREFORE plaintiff prays relief as hereinafter set forth.

FOURTH CAUSE OF ACTION
AGAINST CITY OF BERKELEY AND CITY
OF BERKELEY RENT STABILIZATION BOARD
(FOR DECLARATORY RELIEF)

25. Plaintiff re-alleges and incorporates paragraphs 1 through 15 of the First Cause of Action herein, as though fully set forth.

26. An actual controversy has arisen and now exists between plaintiff and defendants City and Rent Board

regarding section 13 of ordinance No. 5467 N.S. (photocopy attached hereto as Exhibit "B").

27. Plaintiff contends that:

(a) Said ordinance is invalid on its face in that it forces landlords, or persons similarly situated, to supply residential rental housing against their will, even if they choose to cease to supply residential rental housing; thereby denying rights guaranteed by the United States and California Constitutions including freedom from involuntary servitude, equal protection and due process.

(b) Said ordinance is invalid on its face in that it grants a life estate to a tenant contrary to California Civil Code sections 718, 761, et seq., 789 and other related sections.

(c) Said ordinance is invalid and unconstitutional as applied to plaintiff in that defendants, by preventing plaintiff from terminating tenancies of defendant tenants and by preventing plaintiff from going out of business, are denying the rights guaranteed to plaintiff by the United States and California Constitutions including freedom from involuntary servitude, equal protection, and due process.

28. Plaintiff is informed and believes, and thereon alleges that defendants dispute these contentions.

29. Plaintiff desires a judicial determination of the parties' respective rights and duties. Such a declaration is necessary and appropriate at this time because plaintiff has no other adequate remedy to prevent injury resulting from the deprivation of plaintiff's constitutional rights

caused by defendants' application of said ordinance according to its own opinion of its validity.

WHEREFORE, plaintiff prays relief as hereinafter set forth.

FIFTH CAUSE OF ACTION
AGAINST ALL DEFENDANTS
(FOR APPOINTMENT OF A RECEIVER C.C.P. 564.8)

30. Plaintiff re-alleges and incorporates paragraphs 1 through 18 of the First Cause of Action, and paragraphs 22 through 24 of the Third Cause of Action, herein as though fully set forth.

31. Defendant tenants continue to occupy the property as previously set forth without paying rent. Defendants are thereby dissipating the proceeds of the property, and said property will be materially injured in that funds are not being generated for the normal expenses and upkeep of said property.

32. Plaintiff has suffered severe emotional distress as previously alleged. If plaintiff continues to remain in the business of providing rental housing he will suffer irreparable harm.

WHEREFORE, plaintiff prays as (sic) relief as hereinafter set forth.

PRAYER

Plaintiff requests the Court to grant the following relief:

ON THE FIRST CAUSE OF ACTION

1) A judgment declaring that the defendants violated plaintiff's civil rights within the meaning of 42 U.S.C. 1983;

2) That defendants be required to pay plaintiff damages according to proof;

3) That defendants be required to pay plaintiff damages for humiliation, indignity, mental pain and suffering, in the sum of three hundred thousand dollars ($300,000.00).

4) That defendants be required to pay plaintiff exemplary and punitive damages in the sum of three hundred thousand dollars ($300,000.00).

5) That defendants be required to pay plaintiff's attorney fees pursuant to section 1988 of title 42 of the United States Code;

6) That defendants be required to pay plaintiff the cost of suit herein incurred;

ON THE SECOND CAUSE OF ACTION

7) A permanent injunction enjoining defendants and all those acting on their behalf from interfering with plaintiff from going out of business and obtaining possession of his real property, or in any way interfering with plaintiff's constitutional rights.

ON THE THIRD CAUSE OF ACTION

8) For damages in the amount of $300,000.00 with interest thereon at the legal rate from the date of the damages;

9) For reasonable attorney's and appraisal fees according to proof;

10) For costs of suit herein incurred;

ON THE FOURTH CAUSE OF ACTION

11) A declaration that the City of Berkeley ordinance No. 5467 N.S. invalid and unconstitutional both on its face and as applied to plaintiff in that it denies plaintiff constitutional rights of freedom from involuntary servitude, equal protection and due process;

ON THE FIFTH CAUSE OF ACTION

12) That a receiver be appointed by this court to take over the management and control of said property and to collect the rents, issues, and profits therefrom and apply the same to repair and keep said property in good condition and to pay the necessary taxes and mortgage payments as they come due;

ON ALL CAUSES OF ACTION

13) For costs of suit and reasonable attorney's fees pursuant to Code of Civil Procedure sec. 1021.5 and 42 U.S.C. sec. 1988;

14) For the Court to appoint a receiver to operate and maintain the property pending litigation;

15) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Dated: March 13, 1984

Ciraolo & Ciraolo
By: /s/ Michael C. Ciraolo
Attorney for Plaintiff
JON A. VICARS

VERIFICATION

I, JON A. VICARS, am the plaintiff in this action.

I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 13, 1984, at Oakland, California.

/s/ Jon A. Vicars
Plaintiff

EXHIBIT A TO THE COMPLAINT

CITY OF BERKELEY

RENT STABILIZATION BOARD (415) 644-6128
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

November 23, 1983

Mr. Jon A. Vicars
2406 Grant Street
Berkeley, CA 94703

Re: Various Thirty-Day Notices Served on Tenants at:
2435 Jefferson Street, Berkeley, California

Dear Mr. Vicars:

It has come to my attention that you seek to regain possession of rental units you own at the above address on the purported basis of exercising an alleged constitutional right to go out of the rental business. You should be aware

that the good causes for eviction are specifically set forth in Berkeley Municipal Code Section 13.76.130. There is no provision to evict tenants because you wish to cease renting the units. You could, of course, cease being a landlord by selling your property to another person.

Your dispute appears not to be with the tenants but with the provisions of the Rent Stabilization and Eviction for Good Cause Ordinance cited above. Your proper remedy is to pursue declaratory relief in Superior Court if you challenge the fact that the law does not permit evictions for the reasons set forth in your 30 day notice to the tenants.

I am also extremely concerned since your eviction attempts closely follow a Rent Board proceeding in which you were directed to reduce your rents and make substantial refunds to tenants. It is my understanding that all of the tenants who were parties to the petition have been served with eviction notices.

Although you are properly pursuing your administrative remedies of appeal of the Hearing Examiner's decision, your eviction efforts appear to be an attempt to circumvent the effect of the decision of the Examiner before the appeal can be decided. The facts seem to establish a clear case of retaliation against the tenants for exercise of their rights under the Ordinance. Section 13.76.170 of the Berkeley Municipal Code expressly prohibits such retaliation and Section 13.76.190 provides that violations of the Ordinance constitute a criminal offense.

In this instance, your proper remedy is the exercise of your administrative appeal rights and, thereafter, judicial review by way of a writ of mandate pursuant to Code of

Civil Procedure Section 1094.5. Eviction notices and the subsequent probable filing of unlawful detainer actions against the tenants are highly improper.

I consider your actions as not only an attempt to evade the effects of the Hearing Examiner's decision but a collateral attack on the jurisdiction of the Rent Stabilization Board in an inappropriate forum.

Unless you immediately withdraw all of the outstanding 30 day notices which purport to terminate tenancy on the ground that you wish to go out of business, I will be forced to recommend that the Board and City Attorney's Office take all appropriate steps to insure your compliance with the law. This could include the filing of various civil actions against you as well as intervention in any unlawful detainer litigation you bring against the tenants.

I sincerely hope that you will not make it necessary to take such action. If you pursue your challenges to the Ordinance through the proper channels as outlined above you will avoid much needless expense and litigation for all concerned. I strongly urge you to reconsider your present course of action in light of the information contained in this letter.

If you have any questions, please feel free to contact me at your earliest convenience.

Very truly yours,

/s/ Jacqueline Foster,
Program Chief

cc: All tenants at 2435 Jefferson
City Attorney

EXHIBIT B TO THE COMPLAINT

(This exhibit is not reproduced because the relevant provisions of the Rent Stabilization and Eviction for Good Cause Ordinance were included as Appendix H to the Petition for a Writ of Certiorari.

APPENDIX B

Senate Bill No. 505

CHAPTER 1509

An act to add Chapter 12.75 (commencing with Section 7060), to Division 7 of Title 1 of the Government Code, relating to real property.

[Approved by Governor October 2, 1985. Filed with Secretary of State October 2, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

SB 505, Ellis. Public entities: real property.

(1) Existing law contains many provisions regulating the rental or lease of real property.

This bill would prohibit any public entity, as defined, from enacting legislation or to so administer legislation, to compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease.

This bill would provide that this provision does not prevent a public entity from enforcing any contract or agreement by which an owner of residential real property has agreed to offer the accommodations for rent or lease in consideration for a direct financial contribution, as defined, or, with respect to written contracts or agreements entered into prior to July 1, 1986, for any consideration; diminish or enhance, except as specified, any power which currently exists or which may hereafter exist in any public entity to grant or deny any entitlement to the use of real property, including, but not limited to, planning, zoning and subdivision map approvals; diminish or enhance

any power which currently exists or which may hereafter exist in any public entity to mitigate any adverse impact on certain displaced persons; supersede specified statutes relating to relocation assistance, fair employment and housing, unfair competition, civil rights, hiring of property, forcible entry and unlawful detainer, or community redevelopment; or relieve any party to a lease or rental agreement of the duty to perform any obligation under that lease or rental agreement.

This bill would provide that if a public entity, by valid exercise of its police power, has in effect any control or system of control on the price at which accommodations may be offered for rent or lease, that entity may provide that any accommodations which have been offered for rent or lease and which had been subject to that control or system of control at the time the accommodations were withdrawn from rent or lease shall be subject to certain specified provisions governing their subsequent rent or lease. The bill would authorize exemplary damages, as specified, for displacement of tenants or lessees.

This bill would provide that if a public entity determines to apply constraints, as specified, to a successor in interest of an owner who has withdrawn accommodations from rent or lease, the public entity shall record a specified notice with the county recorder.

This bill would further provide that any public entity, which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require that the owner notify the entity of an intention to with-

draw that property from rent or lease and record a copy of a specified memorandum with the county recorder, and require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies.

The bill would prescribe that failure of the owner to comply with the provisions of the bill is a defense in an unlawful detainer action.

(2) The provisions of the bill described in paragraph (1) above would become operative on July 1, 1986.

(3) This bill would declare that an invalid provision or application of its provisions is severable from other provisions or applications of the bill which can be given effect without the invalid provision or application.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would impose a state-mandated local program by requiring the county recorder to record a specified written memorandum in the grantor-grantee index.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Chapter 12.75 (commencing with Section 7060) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.75. RESIDENTIAL REAL PROPERTY

7060. (a) No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease.

(b) For the purposes of this chapter, "accommodations" means the following:

(1) The residential rental units in any detached physical structure containing four or more residential rental units.

(2) With respect to a detached physical structure containing three or fewer residential rental units, the residential rental units in that structure and in any other structure located on the same parcel of land, including any detached physical structure specified in paragraph (1).

7060.1. Notwithstanding Section 7060, nothing in this chapter does any of the following:

(a) Prevents a public entity from enforcing any contract or agreement by which an owner of residential real property has agreed to offer the accommolations for rent or lease in consideration for a direct financial contribution or, with respect to written contracts or agreements entered into prior to July 1, 1986, for any consideration. Any contract or agreement specified in this subdivision is not enforceable against a person who acquires title to the accommodations as a bona fide purchaser for value (or successors in interest thereof), unless (1) the purchaser at the time of acquiring title to the accommodations has

actual knowledge of the contract or agreement, or (2) a written memorandum of the contract or agreement which specifically describes the terms thereof and the affected real property, and which identifies the owner of the property, has been recorded with the county recorder prior to July 1, 1986, or not less than 30 days prior to transfer of title to the property to the purchaser. The county recorder shall index such a written memorandum in the grantor-grantee index.

As used in this subdivision, "direct financial contribution" includes contributions specified in Section 65916 and any form of interest rate subsidy or tax abatement provided to facilitate the acquisition or development of real property.

(b) Diminishes or enhances, except as specifically provided in Section 7060.2, any power which currently exists or which may hereafter exist in any public entity to grant or deny any entitlement to the use of real property, including, but not limited to, planning, zoning, and subdivision map approvals.

(c) (1) Diminishes or enhances any power which currently exists or which may hereafter exist in any public entity to mitigate any adverse impact on persons displaced by reason of the withdrawal from rent or lease of any accommodations in any residential hotel, as defined by Section 50519 of the Health and Safety Code, which is expressly reserved, or generally used, for occupancy by lower income households, as defined by Section 50079.5 of the Health and Safety Code.

(2) The reference to residential hotels in paragraph (1) is not intended by the Legislature to diminish or en-

hance any power which currently exists or which may hereafter exist in any public entity to require those same actions for other types of accommodations.

(d) Supersedes any provision of Chapter 16 (commencing with Section 7260) of this division, Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of this code, Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, Part 2 (commencing with Section 43) of Division 1 of the Civil Code, Title 5 (commencing with Section 1925) of Part 4 of Division 3 of the Civil Code, Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, or Division 24 (commencing with Section 33000) of the Health and Safety Code.

(e) Relieves any party to a lease or rental agreement of the duty to perform any obligation under that least or rental agreement.

7060.2. If a public entity, by valid exercise of its police power, has in effect any control or system of control on the price at which accommodations may be offered for rent or lease, that entity may, notwithstanding any provision of this chapter, provide by statute or ordinance, or by regulation as specified in Section 7060.5 that any accommodations which have been offered for rent or lease and which were subject to that control or system of control at the time the accommodations were withdrawn from rent or lease, shall be subject to the following:

(a) If the accommodations are offered again for rent or lease for residential purposes within one year of the date the accommodations were withdrawn from rent or lease, the following provisions shall govern:

(1) The accommodations shall be subject to any control on the price at which they may be offered in the manner and to the same extent as if the accommodations had not been withdrawn from rent or lease. This paragraph shall prevail over any conflicting provision of law authorizing the landlord to establish the rental rate upon the initial hiring of the accommodations.

(2) The owner of the accommodations shall be liable to any tenant or lessee who was displaced from the property by that action for actual damages which were the proximate result of that displacement, as defined and limited by the standards for compensation or payments applied to public entities with respect to rental dwellings by Sections 7262 and 7264, and punitive damages in an amount which does not exceed the contract rent for six months. Any action by a tenant or lessee pursuant to this paragraph shall be brought within two years of that displacement. However, nothing in this paragraph precludes a tenant from pursuing any alternative remedy available under the law.

(3) A public entity which has acted pursuant to this section may institute a civil proceeding against any owner who has again offered accommodations for rent or lease subject to this subdivision, for exemplary damages for displacement of tenants or lessees. The exemplary damages shall not exceed the contract rent for six months for any unit or units from which a tenant or lessee was displaced by withdrawal of the unit from rent or lease pursuant to this chapter. Any action by a public entity pursuant to this paragraph shall be brought within three years of the withdrawal of the accommodations from rent or lease.

(4) Any owner who offers accommodations again for rent or lease shall first offer the unit for rent or lease to the tenant or lessee displaced from that unit by the withdrawal pursuant to this chapter, if the tenant has advised the owner in writing within 30 days of the displacement of his or her desire to consider an offer to renew the tenancy and has furnished the owner with an address to which that offer is to be directed. That tenant, lessee, or former tenant or lessee may advise the owner at any time during the eligibility of a change of address to which an offer is to be directed.

If the owner again offers the accommodations for rent or lease pursuant to this subdivision, and the tenant or lessee has advised the owner pursuant to this subdivision of a desire to consider an offer to renew the tenancy, then the owner shall offer to reinstitute a rental agreement or lease on terms permitted by law to that displaced tenant or lessee.

This offer shall be deposited in the United States mail, by registered or certified mail with postage prepaid, addressed to the displaced tenant or lessee at the address furnished to the owner as provided in this subdivision, and shall describe the terms of the offer. The displaced tenant or lessee shall have 30 days from the deposit of the offer in the mail to accept by personal delivery of that acceptance or by deposit of the acceptance in the United States mail by registered or certified mail with postage prepaid.

(b) (1) If the accommodations are offered again for residential purposes more than one year after the date the accommodations were withdrawn from rent or lease, the

accommodations shall be subject to any control on the price at which they may be offered in the manner and to the same extent as if the accommodations had not been withdrawn from rent or lease, subject to any adjustments otherwise available under the system of control. This subdivision shall prevail over any conflicting provision of law authorizing the landlord to establish the rental rate upon the initial hiring of the accommodations.

(2) A public entity which has acted pursuant to this section, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that an owner who offers accommodations again for rent or lease within a period not exceeding 10 years from the date on which they are withdrawn, and which are subject to this subdivision, shall first offer the unit to the tenant or lessee displaced from that unit by the withdrawal, if that tenant or lessee requests the offer in writing within 30 days after the owner has notified the public entity of an intention to offer the accommodations again for residential rent or lease pursuant to a requirement adopted by the public entity under subdivision (c) of Section 7060.4. The owner of the accommodations shall be liable to any tenant or lessee who was displaced by that action for failure to comply with this paragraph, for punitive damages in an amount which does not exceed the contract rent for six months.

(c) If the accommodations are demolished, and new accommodations are constructed on the same property, and offered for rent or lease within five years of the date the accommodations were withdrawn from rent or lease, the newly constructed accommodations shall be subject to any system of controls on the price at which they would be offered on the basis of a fair and reasonable return on the

newly constructed accommodations, notwithstanding any exemption from such a system of controls for newly constructed accommodations.

7060.3. If a public entity determines to apply constraints pursuant to Section 7060.2 to a successor in interest of an owner who has withdrawn accommodations from rent or lease, the public entity shall record a notice with the county recorder which shall specifically describe the real property where the accommodations are located and the dates applicable. The notice shall be indexed in the grantor-grantee index.

A person who acquires title to the real property subsequent to the date upon which the accommodations thereon have been withdrawn from rent or lease, as a bona fide purchaser for value, shall not be a successor in interest for the purposes of this chapter if the notice prescribed by this section has not been recorded with the county recorder at least one day before the transfer of title.

7060.4. (a) Any public entity which, by a valid exercise of its police power, has in effect any control or system of control on the price at which accommodations are offered for rent or lease, may require by statute or ordinance, or by regulation as specified in Section 7060.5, that the owner notify the entity of an intention to withdraw those accommodations from rent or lease and may require that the notice contain statements, under penalty of perjury, providing information on the number of accommodations, the address or location of those accommodations, the name or names of the tenants or lessees of the accommodations, and the rent applicable to each residential rental unit.

Information respecting the name or names of the tenants, the rent applicable to any residential unit, or the total number of accommodations, is confidential information and for purposes of this chapter shall be treated as confidential information by any public entity for purposes of the Information Practices Act of 1977, as contained in Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code. A public entity shall, to the extent required by the preceding sentence, be considered an "agency," as defined by subdivision (d) of Section 1798.3 of the Civil Code.

The statute, ordinance, or regulation of the public entity may require that the owner record with the county recorder a memorandum summarizing the provisions, other than the confidential provisions, of the notice in a form which shall be prescribed by the statute, ordinance, or regulation, and require a certification with that notice that actions have been initiated as required by law to terminate any existing tenancies. In that situation, the date on which the accommodations are withdrawn from rent or lease for purposes of this chapter is 60 days from the delivery in person or by first-class mail or nat notice to the public entity.

(b) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify any tenant or lessee displaced pursuant to this chapter that the public entity has been notified pursuant to subdivision (a), that the notice to the public entity specified the name and the amount of rent paid by the tenant or lessee as an occupant of the accom-

the notice to the public entity, together with a notice to the tenant or lessee of his or her rights under paragraph (4) of subdivision (a) of Section 7060.2.

(c) The statute, ordinance, or regulation of the public entity adopted pursuant to subdivision (a) may also require the owner to notify the public entity in writing of an intention to again offer the accommodations for rent or lease.

7060.5. The actions authorized by Sections 7060.2 and 7060.4 may be taken by regulation adopted after public notice and hearing by a public body of a public entity, if the members of the body have been elected by the voters of the public entity. The regulation shall be subject to referendum in the manner prescribed by law for the ordinances of the legislative body of the public entity except that:

(a) The decision to repeal the regulation or to submit it to the voters shall be made by the public body which adopted the regulation.

(b) The regulation shall become effective upon adoption by the public body of the public entity and shall remain in effect until a majority of the voters voting on the issue vote against the regulation, notwithstanding Section 4050, 4051, or 4055 of the Elections Code or any other law.

7060.6. If an owner seeks to displace a tenant or lessee from accommodations withdrawn from rent or lease pursuant to this chapter by an unlawful detainer proceeding, the tenant or lessee may appear and answer or demur pursuant to Section 1170 of the Code of Civil Procedure and may assert by way of defense that the owner has not complied with the applicable provisions of this chapter, or

statutes, ordinances, or regulations of public entities adopted to implement this chapter, as authorized by this chapter.

7060.7. It is the intent of the Legislature in enacting this chapter to supersede any holding or portion of any holding in Nash v. City of Santa Monica, 37 Cal. 3d 97 to the extent that the holding, or portion of the holding, conflicts with this chapter, so as to permit landlords to go out of business. However, this act is not otherwise intended to do any of the following:

(1) Interfere with local governmental authority over land use, including regulation of the conversion of existing housing to condominiums or other subdivided interests.

(2) Override procedural protections designed to prevent abuse of the right to evict tenants.

(3) Permit an owner to withdraw from rent or lease less than all of the accommodations, as defined by paragraph (1) or (2) of subdivision (b) of Section 7060.

(4) Grant to any public entity any power which it does not possess independent of this chapter to control or establish a system of control on the price at which accommodations may be offered for rent or lease, or to diminish any such power which that public entity may possess, except as specifically provided in this chapter.

(5) Alter in any way either Section 65863.7 relating to the withdrawal of accommodations which comprise a mobilehome park from rent or lease or subdivision (f) of Section 798.56 of the Civil Code relating to a change of use of a mobilehome park.

SEC. 2. Section 1 of this act shall become operative on July 1, 1986.

SEC. 3. If any provision of Section 1 of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without invalid provision or application, and to this end the provisions of this act are severable.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act.